

REMARKS

The present application includes pending claims 1-31, all of which have been rejected.

Claims 1, 11 and 21 were provisionally rejected on the ground of nonstatutory obviousness type double patenting over claims 1, 11 and 21 of copending Application No. 10/675,904. The Applicant has filed a terminal disclaimer to overcome this rejection.

Claims 1-7, 9-17, 19-27, 29 and 30-31 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. 2002/0104099 ("Novak"). Claims 8, 18 and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Novak in view of U.S. 6,868,452 ("Eager"). The Applicant respectfully traverses these rejections for at least the reasons previously discussed during prosecution and the following:

The Applicant first turns to the rejection of claims 1-7, 9-17, 19-27, and 29-31 under 35 U.S.C. 102(b) as being anticipated by Novak. With regard to the anticipation rejections under 102(b), MPEP 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See *id.* (internal citation omitted).

With regard to the rejection of independent claim 1 under 102(b), the Applicant submits that Novak does not describe, teach or suggest at least the limitation of "wherein said media channel may be pushed from said first geographic location to a second geographic location," as recited by the Applicant in independent claim 1.

Initially, the Office Action cites Paragraph [0018] of the present application and states that "in light of the specification, the Examiner interprets Applicant's use of 'channel [that] may be pushed' to mean providing a path of access through the network (authorized users) in order to display a list of available media (user created media channels) to a receiving a user in a similar manner to broadcast television." See April 10, 2008 Office Action at page 4. The portion cited by the Office Action states, however, the "media exchange network allows users to effectively become their own broadcasters from their own homes by creating their own media channels **and pushing those media channels to other authorized users on the media exchange network....**" See present application at Paragraph [0018] (emphasis added). The Applicant respectfully submits that the specification stands on its own and Paragraph [0018] clearly states that **users** can create their own media channels and **push** those media channels themselves to **other authorized users**.

The Office Action also states the following:

Novak teaches a method of and processor for programming media content in a distributed media network (using STB 152 executing the method of Figure 11 as described in Paragraphs 0078-0080), said method and processor operation comprising: selecting (by way of remote control button 174 described in Paragraph 0073 Lines 7-10) at least one customized media channel established by a user ("synthetic channel" described in Paragraph 0069 Lines 6-10; as displayed in EPG 152 during step 1112) based on at least one input from said user; identifying one or more of media, data and/or service (Figure 5 interface 506 as described in Paragraph 0061 Lines 5-8) for said selected at least one customized media channel; and presenting, at a first geographic location (upload source 122, as described in Paragraph [56]) directly in said at least one customized media channel, said identified one or more of media, data and/or service (see interface of Figure 7 described in Paragraphs 0064 Lines 1-10), wherein said media channel may be pushed from said first geographic location to a second geographic location (step 1104 to step 1110 of Figure 11, as described in Paragraphs [78]-[80] and with further reference to Paragraph [75] describing operations of "second location" STB 152).

See April 10, 2008 Office Action at page 10.

Referring to FIG. 11 of Novak, at block 1116, Novak discloses that the provider 108 streams the media programs to the client terminal (the STB 152) for viewing by the end user. Novak, including all steps in FIG. 11, does not describe, teach or suggest that the communication channel, which includes personal and/or broadcast media, may be pushed from the first geographic location (where the STB 152 is) to a second geographic location.

The Office Action states that the "Examiner disagrees that Novak does not teach a first and second geographic location." See April 10, 2008 Office Action at page 4. As clearly shown above, however, the Applicant is not asserting that Novak does not teach first and second geographic locations. Instead, the Applicant clearly asserts that Novak does not describe, teach or suggest a **communication channel**, which includes personal and/or broadcast media, that is **pushed from one geographic location to another geographic location**. In fact, Novak discloses that media can be uploaded to a server and a **network provider** may communicate the uploaded media to an end user. In particular, Novak discloses the following:

FIG. 4 is a flow diagram illustrating a method to provide a media program to a synthetic channel in accordance with an embodiment of the invention. At a block 402, one or more media objects, such as video clips, **are uploaded to the web site 124** by the upload source (e.g., an individual or consumer). This can also include a server operated from an individual or consumer web server that is connected to the Internet with an "always available" Internet connection such as DSL, or cable modem. Thus, an embodiment of the invention allows an ordinary individual to perform the uploading, instead of or in addition to a typical "professional studio." The upload source 122 can comprise or can use a set top box, a PC, or other access device to upload the media objects to the web site (e.g., to a server).

Novak at [0056] (emphasis added). Thus, as clearly shown above, Novak discloses that **video clips**, as opposed to a medial channel, are **uploaded to a**

web site by an upload source. Novak does not describe, teach or suggest, however, **pushing a communication channel, which includes personal and/or broadcast media,** from a first geographic location (where the STB 152 is) **to a second geographic location.**

The Office Action cites Figure 11 of Novak, however, and states that "Novak teaches pushing a media channel from the first geographic location to the second geographic location." See April 10, 2008 Office Action at page 4. In particular, the Office Action states that with "reference to Fig. 11, Novak teaches pushing a media channel from a first geographic location in step 1104 to a second geographic location in step 1110." See *id.*

However, Figure 11 shows that step 1104 is "upload media objects," while step 1110 is "subscribe end user." Step 1106 states "organize media objects into media program(s)," while step 1108 states "link uploaded media objects to local studio and/or cable service provider." See Novak at Figure 11. Novak is clear that media objects are "uploaded" and linked to a local studio and/or cable service provider. In particular, the individual "uploads media objects," as opposed to a media channel, "to a server." See Novak at [0078]. After the media objects are uploaded, "the individual organizes the uploaded media objects into one or more media programs for eventual broadcast to end users." See *id.* at [0078]. "The uploaded objects are linked to the local studio 106, to the cable service provider 108, or to another party." See *id.* at [0079]. The "end user is subscribed, thereby

providing the end user with access to the EPG 153 that lists the synthetic channel and/or making the end user eligible to receive the media programs." *See id.* at [0080]. Note, Novak does not describe, teach or suggest that the individual pushes anything to the end user. Neither Figure 11, nor its associated description, describes, teaches or suggests **pushing a communication channel, which includes personal and/or broadcast media, from a first geographic location (where the STB 152 is) to a second geographic location.**

Furthermore, with regard to the "synthetic channel" capability described in [0069] of Novak, the Applicant points out that Novak's "synthetic channel" acts just like regular television programming – **an end user may tune to the programs in the channel and view them like regular television programming.**

In this regard, Novak does not describe, teach or suggest at least "wherein said media channel may be pushed from said first geographic location to a second geographic location," as recited in independent claim 1.

Accordingly, the Applicant respectfully submits that independent claim 1, and the claims that depend therefrom, are not anticipated by Novak. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

Based on at least the above, the Applicant respectfully submits that the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 102(b) as being anticipated by Novak has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-7, 9-10, 12-17, 19-20, 22-27, and 29-31 depend from independent claims 1, 11 and 21, respectively, and are, therefore, also in condition for allowance.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-30.

For at least the reasons discussed above, the Applicant respectfully submits that claims 8, 18 and 28 should also be in condition for allowance, as these claims depend from claims 1, 11 and 21, respectively.

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of a pending or future claim).

The Applicant respectfully submits that the pending claims are in condition for allowance for at least the reasons discussed above. If the Examiner has any questions or the Applicant can be of any assistance, the Examiner is invited to

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contact the undersigned attorney. The Commissioner is authorized to charge any necessary fees, including the \$130 fee for the terminal disclaimer, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

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